

“The Free Trade Area of the Americas and the Rule of Law”

**Ambassador Charlene Barshefsky
United States Trade Representative**

**Georgetown Law Center
Washington, D.C.**

October 16, 1998

Thank you all very much, and thank you for that introduction.

I am very pleased to be here at Georgetown today, to take up with the seminar participants a topic at the heart of our relations with our neighbors in the Western Hemisphere: the promotion of the rule of law, and the part our negotiations toward the Free Trade Area of the Americas can play in it.

In one sense, the relevance of the FTAA to the rule of law is quite simple. The nine FTAA Negotiating Groups in Miami address topics from market access to competition policy; subsidies, anti-dumping and countervailing duties; intellectual property; government procurement; investment; agriculture; and services. The result in each case will be a set of rules accepted through democratic decisions by the elected governments of the participating nations, enforceable by a transparent and binding dispute settlement procedure -- all indicators of the rule of law.

SHARED INTERESTS

But we can also go a bit deeper. The FTAA is both the result and a contributor to a broader shift in the hemisphere. And we can begin to understand this shift by asking the basic question: why have we embarked on this effort? To this there are three, mutually supporting, answers. The first two of them are permanent facts of life.

One is geography. The countries of the Western Hemisphere are our neighbors. They will always be our neighbors. And it is plainly in our national interest to have the best possible trade relationship with our neighbors.

The other is the interest of our citizens. The Western Hemisphere is our largest and fastest-growing market; we are the largest and fastest-growing market for our neighbors. Broadening and deepening this trade relationship will help working people, firms, farmers, ranchers, and service providers everywhere to find new opportunities.

EARLIER EFFORTS

These are enduring, permanent realities. And so it should come as no surprise to find that our generation is not the first to come up with the idea of a hemispheric free trade agreement.

The Liberal vision shared by the leaders of Latin America's independence movements implied precisely such a step. Simon Bolivar himself was the first American leader to propose a hemispheric trade conference. And the idea, in one form or another, was revived on several subsequent occasions. Benito Juarez proposed a free trade agreement between the United States and Mexico in the 1850s. In 1889, U.S. Secretary of State James Blaine actually convened a hemispheric conference in Washington, whose goal was hemispheric free trade.

But all of their efforts failed. And they failed neither because our predecessors were incompetent -- they obviously were nothing of the kind -- nor because of the complexity of the task. A trade agreement in 1889, when the only issues were customs procedures and tariffs on agricultural products and manufactured goods, would in technical terms have been far easier than the task before the nine Negotiating Groups in 1998. Rather, they failed because of barriers of perception and ideas -- and as Jose Marti said after Blaine's conference:

"Barriers of ideas are stronger than barricades of stone."

BARRIERS OF IDEAS

One aspect of this was a set of mutually destructive perceptions. Americans often looked south and saw only caudillos, guerrillas, and opportunistic politicians denouncing the *Yanqui* to mask corruption and repression at home. Latin Americans intellectuals often looked north and saw only an interfering, hegemonic power.

A second, equally profound aspect was that created by a vision, held for many years in many countries, of the role of the state and law in economic development. The Peruvian economist Hernando de Soto describes it by borrowing the term "mercantilism" from trade policy:

"a politically administered economy in which economic agents were subject to specific, detailed regulation. The mercantilist state did not let consumers decide what should be produced; it reserved to itself the right to single out and promote whichever economic activities in considered desirable, and to prohibit or discourage those which it considered inappropriate. To achieve its objectives, the mercantilist state granted privileges to favored producers and consumers by means of regulation, subsidies, taxes and licenses."

Ultimately, this view makes the state superior to the citizen and as an agent of economic development. In his book The Other Path de Soto describes the practical consequences -- a vast web of requirements for licenses, forms and paperwork, which made it impossibly difficult for new entrepreneurs to enter either national or international markets. This discouraged respect for courts and judicial procedures, and encouraged those not favored by the system to move economic life outside the law. Much of the political conflict between right and left simply shifted the benefits of these systems back and forth.

BRIDGES OF IDEAS

Today, much of this has vanished. Since the end of the Cold War, the permanent factors of interest and geography which make the FTAA logical have been joined by a third which makes it possible -- a consensus on the citizen rather than the state as the source of law and policy.

This has had profound and inspiring results in many areas -- especially in promoting democratic government and universal education. In economics, it has meant the decline of the "mercantilism" de Soto discussed. Most governments in the hemisphere now agree in principle that economic development is best achieved through freedom, open markets and entrepreneurialism rather than detailed guidance by the state in favor of one group or another. Thus, regulation has an essential role in protecting consumers, promoting safe workplaces, and protecting the environment and the public health; but very rarely in deciding what products to make, to import and to export. This change is slow, but fundamental.

And looking beyond economics, it has transformed the Americas in the space of a decade. In Central America, the sounds of politics are no longer gunshots, but campaign speeches and parliamentary debate. Throughout South America, soldiers have left Presidential palaces and returned to quarters. State-owned enterprises have been privatized and deregulation introduced. Trade has flourished, as each part of the hemisphere has taken crucial steps toward integration; and as each of these steps vindicated and strengthened the values we share.

THE CARIBBEAN

In trade terms, the first step was the Caribbean Basin Initiative, begun in 1983 as a set of unilateral American trade concessions and strengthened in 1986 and 1990.

CBI was, in its origins, a political policy, aimed at helping to end the wars of the 1980s by giving the people of the Caribbean and Central America economic opportunity. In this it succeeded: as CBI's trade and tax benefits helped to create jobs in all the 24 beneficiary countries, the economic and social frustrations which lay at the roots of conflict diminished.

But CBI also succeeded as trade policy, with both the U.S. and the Caribbean benefiting from closer trade relations. CBI countries' production often complements U.S. production, or is in partnership with American firms. The major CBI exporters are also the leading markets for U.S. products in their region. Since 1989, US goods exports to CBI countries have more than doubled from \$9 billion to \$18.5 billion, supporting an estimated 360,000 jobs in the U.S.. To put this in context, last year we exported only \$13 billion to China. And the advances the CBI beneficiaries have made from this experience complement their own efforts to expand regional trade through the Caribbean organization CARICOM and the Central American Common Market.

CFTA AND NAFTA

The second, far more ambitious, step was the the North American Free Trade Agreement,

joining the U.S., Canada and Mexico in fully open trade.

The first move -- the US-Canada Free Trade Agreement -- is now taken for granted. But our trade relationship with Canada is the largest bilateral trade relationship anywhere in the world. We trade more with Canada than with the entire European Union, or with Japan and China combined. The agreement, therefore, was a technical triumph and a demonstration to the hemisphere that full-scale trade integration is possible.

This achievement was deepened and broadened in 1993, when Mexico joined to create the North American Free Trade Agreement. As NAFTA approaches its fifth anniversary, bilateral trade with Mexico has grown from \$80 billion to \$170 billion. This includes growth in American exports from \$41 billion in 1993 to likely \$85 billion this year, putting Mexico ahead of Japan for the second consecutive year, and behind only Canada as our second largest export market.

NAFTA also proved its value in both the peso crisis of 1995 and the current Asian financial crisis. In 1995, it helped make Mexico's recession shorter and milder than that of 1982, and also to prevent restrictions on trade with the U.S. and Canada which ultimately worsened the crisis of the early 1980s in Mexico. In the first six months of 1998, as our exports to Asia fell \$14 billion from last year's levels, our \$11 billion increase in exports to Canada and Mexico helped us preserve jobs and growth. In fact, Mexico is our fastest-growing major export market.

SOUTH AMERICAN INTEGRATION

The same process is well underway in South America, with Chile's trade agreements with its neighbors, the Andean Community and the development of Mercosur. Again, these both justified and strengthened the hemispheric consensus.

Chile's market opening, combined with its trade agreements with its neighbors, stimulated economic growth of over 8% a year; brought more than a million people out of poverty since 1993; and more than doubled per capita GDP. Its economic integration with the world brought in \$8 billion in foreign investment last year, and increased Chile's exports by over 9%. And throughout this period, its commitment to democracy and reconciliation has become an example to the world.

Likewise, the integration of Mercosur has benefited all its participants and the outside world as well. Since the Treaty of Asuncion in 1991, intra-Mercosur trade has increased by over 400%. As intra-Mercosur trade has boomed, Mercosur's exports to the rest of the world have increased by over \$20 billion. And the larger, simpler market Mercosur creates has allowed our own exports to the member countries to grow from less than \$9 billion in 1991 to more than \$23 billion last year.

THE LESSONS

The lessons of this experience are clear.

Trade integration has created growth and mutual benefit in North America, in the Caribbean Basin, and in South America.

Trade integration has both benefited from and strengthened peace, freedom, democracy and the rule of law throughout the hemisphere.

And the Free Trade Area of the Americas will improve, strengthen, and transcend all of this. It will create the world's largest free trade area -- uniting 34 countries and almost 800 million people; geographically stretching from Point Barrow to Patagonia, Hawaii to Recife, Easter Island to Newfoundland -- through fair, transparent rules, and impartial dispute settlement procedures. And thus it will open new opportunities for prosperity to workers, businesses and farmers everywhere in the hemisphere.

THE OBSTACLES

What then are the obstacles? Let me mention three.

For one thing, the barriers of ideas are not entirely down. That is clear here in the United States in the emotional opposition of some on both right and left to the North American Free Trade Agreement, and in the debate over fast track. But day by day, as U.S. entrepreneurs invest and sell into or import from Latin America, as U.S. students meet their Latin counterparts, as popular culture grows closer and commerce inexorably more interlinked, they will continue to fall. As we proceed, we will be making our case to the public for the FTAA, and for fast track authority. It is my hope that each of you, if you agree, will help us in the effort.

At the same time, the public -- in the United States and elsewhere -- clearly expects trade policy to respond more effectively than it has in the past to the concerns of ordinary citizens. This is natural, as trade grows and more deeply affects our lives. That means our FTAA negotiations must pay appropriate attention to the views of business, labor, consumer groups, environmentalist and others. Just as important, we must promote openness and citizen contribution if the results are to be credible.

Finally, the FTAA negotiations have begun during what President Clinton has rightly called the most dangerous financial crisis in fifty years, and this may intensify traditional fears about trade liberalization.

But trade liberalization is not the cause of the crisis; nor should it be its victim. The fact is, some of the problems evident at the outset of the crisis were caused by the opposite of open markets: lack of transparency, politically directed loans, weak rule of law, and consequently debilitated financial institutions. These are phenomena characteristic of the "mercantilist" system our hemisphere has rejected. They were at the heart of the Latin American debt crisis of the early

1980s. And now as then, our response must involve greater competition, more openness and transparency, and strengthening of the rule of law -- that is, the things we have set out to do in the FTAA.

FTAA NEGOTIATIONS

And where do we go from here?

In the next few years, our work must draw from the lessons of all the hemispheric trade initiatives as we approach the details of an FTAA. It must address both misperceptions and legitimate concerns about the negotiations and the agreements thus far. And we have designed a negotiating process, I believe, which will do both.

The nine Negotiating Groups address every issue crucial to a comprehensive hemispheric trade agreement. Concurrent with the negotiations, a special joint private sector-government committee will reflect on the use of new technologies and methods of trade related to electronic commerce, Internet readiness and other innovations.

At the same time, we have ensured that each of the participants in the negotiations will have significant responsibility for their success. Every country will, at some point, lead one of the Negotiating Groups, from Nicaragua as Chair of Services in the Miami talks this year, to the US and Brazil as Co-Chairs of the entire process during the last two years.

And we have recognized the fundamental importance of citizen contribution to trade policy through the establishment of a committee of government officials from all FTAA countries to listen to civil society -- business, labor, consumers, environmentalists, academics and others -- and present their advice to the Trade Ministers.

FTAA RESULTS

Finally, the most important question -- what results do we expect from all this?

First, as directed by the Miami Summit, we will see "concrete progress by the end of the century." Most immediately, we plan to reach agreements on common sense, concrete business facilitation measures. These could include, e.g., a code of conduct for customs integrity; improved customs procedures for express shipments; transparency and due process in government procurement; or adherence to existing conventions on arbitral awards. All of these promote the rule of law and even-handedness in commerce.

And by 2005, at the end of the talks, we will see a rigorous, comprehensive trade agreement establishing a single set of rules for conducting business in the hemisphere -- expanding trade, speeding growth, attracting investment from all over the world and cementing our strategic position in the hemisphere. And we can aspire to results well beyond this.

The FTAA can help us reach trade goals outside the hemisphere. As early as next September, the nine FTAA Negotiating Groups are scheduled to produce “annotated outlines” of the FTAA chapters in each area. These outlines will help us reach some common understanding on such difficult issues as subsidies and other trade distorting practices in agriculture; market access and liberalization in services; effective copyright protection in emerging technologies; and transparency in government procurement. Thus, as negotiations begin at the WTO next fall, we should be able to move toward a more cohesive Western Hemisphere position that enables us to promote our shared interests more effectively worldwide.

The FTAA also has the potential to improve governance. Open and fair procurement practices can raise standards of honesty and transparency. And new dispute settlement procedures will enhance our ability to fairly resolve economic disagreements through the rule of law.

Most important, both the negotiations and the FTAA, if done in the spirit envisioned at the Miami and Santiago Summits, can further strengthen the values of openness, accountability, democracy, and the rule of law which the hemisphere has embraced -- and which themselves have made the FTAA possible.

CONCLUSION

This is the vision before us as the talks begin.

A community of common interests in prosperity; jobs; and economic growth

A community of common aspirations for better health; environmental protection, and cultural exchange.

And a community of common values, in a hemisphere united by democracy, freedom, social justice, and the rule of law.

For the first time in two centuries, it is within our grasp.

We must not let it slip away.